

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

GOOD SHEPHERD ASSISTED LIVING ) CASE NO. \_\_\_\_  
CORP. and GOOD SHEPHERD LUTHERAN) )  
COMMUNITY CORP., ) )  
Plaintiffs, ) )  
vs. ) )  
GREAT AMERICAN INSURANCE ) )  
COMPANY OF NEW YORK d/b/a GREAT ) )  
AMERICAN INSURANCE COMPANY and ) )  
ERIC HOWELL, ) )  
Defendants. ) )  
)

---

**NOTICE OF REMOVAL AND  
DEMAND FOR JURY**

COME NOW Defendants, Great American Insurance Company of New York ("Great American N.Y.") Eric Howell, ("Howell") and to the extent that Great American Insurance Company has been named as a Defendant, by and through their undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, jointly file this Notice of Removal of Case No. CI 14-212 from the District Court of Washington County, Nebraska to the United States District Court for the District of Nebraska. In support of the Notice of Removal, the Defendants state as follows:

**TIMELINESS OF REMOVAL**

1. This civil action was originally filed in the District Court of Washington County, Nebraska on October 30, 2014.
2. Great American N.Y. has not been served with process but enters its voluntary appearance by the filing of this Notice of Removal.
3. Great American Insurance Company was served on November 17, 2014.

4. Howell was served with a Summons on November 14, 2014.

5. All Defendants consent to removal.

6. The Defendants' Notice of Removal is timely, as it was filed within the thirty (30) day time frame allowed pursuant to 28 U.S.C. § 1446(b).

7. Upon information and belief, at the time of removal and at all times material hereto, Plaintiffs were citizens of Nebraska. (Complaint ¶1) Great American N.Y. is a citizen of the states of New York and Ohio and is an insurance company organized and existing pursuant to the laws of the state of New York with its principal place of business in Cincinnati, Ohio. (Complaint ¶2) Great American Insurance Company is a citizen of the state of Ohio and is an insurance company organized and existing pursuant to the laws of the state of Ohio, which is the principal place of business in Cincinnati, Ohio. Plaintiffs do not make any allegations as to the citizenship of Howell in the Complaint, other than to say he works in Omaha, Nebraska. (Complaint ¶2).

8. As required by 28 U.S.C. § 1446(a), copies of all "process, pleadings and orders served upon each such defendant" are attached hereto as Exhibit 1 to this Notice of Removal.

9. In their Complaint, Plaintiffs seeks damages in excess of \$3,535,815.48. (Complaint, ¶ 22) As such, the amount in controversy easily satisfies the requisite \$75,000 amount in controversy requirement for diversity jurisdiction pursuant to 28 U.S.C. § 1332(a).

10. As set forth more fully below, this Court has original subject matter jurisdiction on diversity grounds pursuant to 28 U.S.C. §1332(a)(1) and (2). *See also* 28 U.S.C. §1441(a) providing that any civil action filed in state court which the district would have original jurisdiction may be removed.

11. The Complaint is silent on the citizenship of Howell. (Complaint ¶ 3) As such, Plaintiffs have not alleged sufficient facts to defeat diversity jurisdiction and Removal is appropriate based on the allegations of Plaintiffs Complaint. Even assuming Plaintiffs had alleged Howell is a citizen of the state of Nebraska, Removal is still appropriate as Howell has been fraudulently joined for the sole purpose of destroying diversity and therefore an exception to the complete diversity rule applies. *See In re Prempro Products Liability Litigation*, 591 F.3d 613, 620 (8th Cir. 2010); *Anderson v. Home Ins. Co.*, 724 F.2d 82, 83 (8<sup>th</sup> Cir. 1983).

### **ALLEGATIONS OF THE COMPLAINT**

12. Plaintiffs generally allege that they are entitled to property insurance benefits due to damage sustained by various buildings on their Property in Blair, Nebraska due to a severe thunderstorm on or about June 3, 2014. (Complaint, ¶ 6). Plaintiffs further allege that NHI Adjusters (“NHI”), was hired by Great American N.Y. to work on the Good Shepherd claims and that Howell, an employee of NHI, was assigned to be an adjuster on the claim. (*Id.* ¶ 7).

13. Plaintiffs’ claim for relief against Howell alleges that he acted in bad faith through his acts and/or omissions in adjusting the claim on behalf of Great American N.Y. (*Id.* ¶7 and ¶20).

14. Specifically, in Paragraph 7, Plaintiffs allege acts and omissions allegedly constituting bad faith on the part of Howell, stating:

- Howell, who is employed by NHI Adjusters, was hired by Great American and assigned as an individual adjuster on the claim.
- Upon information and belief, Howell conducted a substandard investigation and inspection of the Property, prepared a report that failed to include all of the damages, and purposefully undervalued damages to the Property.
- Howell excluded certain items from coverage despite not having reviewed the policy or familiarized himself with its exclusions.

- Indeed, as of August 29, 2014, after Howell had performed his work, Howell did not know which exclusions, if any, applied to the claim.
- Defendants acted in concert and performed an outcome-oriented investigation of Plaintiff's claim that resulted in a biased, unfair, and inequitable evaluation of Plaintiff's losses on the Property.
- Instead of acknowledging liability once it had become reasonably clear to them, Defendants delayed payments and approval of much-needed repairs, causing further damage, including mold, to the facility.

(Complaint ¶7) These allegations are repeated at ¶20 of the Complaint

## **GROUND FOR REMOVAL**

### **A. Defendant Howell's citizenship does not defeat diversity due to Plaintiffs' fraudulent joinder.**

15. Complete diversity of citizenship exists between the Plaintiff and Great American. Plaintiffs do not allege any facts as to the citizenship of Howell and this court must accept the allegations at the time of Removal. (Complaint ¶3) Nonetheless, had Plaintiffs alleged that Howell was a citizenship of Nebraska, the citizenship of Howell should be disregarded as he has been fraudulently joined.

16. Under well-established principles of federal law and civil procedure, a plaintiff may not destroy a defendant's right of removal by fraudulently or improperly joining a resident defendant. *Anderson v. Home Insurance Co.*, 724 F.2d 82, 84 (8th Cir. 1983) (finding that a party that was joined "solely to deprive federal courts of jurisdiction is deemed fraudulent and does not prevent removal.") The Eighth Circuit instructs the district courts to "give paramount consideration to the reasonableness of the basis underlying the state claim" when determining if a non-diverse defendant has been fraudulently joined. *Menz v. New Holland N. Am. , Inc.*, 440 F.3d 1002, 1004 (8<sup>th</sup> Cir. 2006) (quoting *Filler v. Norfolk S. Ry. Co.*, 336 F.3d 806, 810 (8th Cir.2003)).

17. The Complaint contains the judicial admission that Howell was an employee of NHI. Plaintiffs do not allege any contractual relationship between Howell and Good Shepherd nor do they allege any contractual relationship between Howell and Great American N.Y. Nevertheless, Plaintiffs claim that Howell is personally liable to Plaintiffs for bad faith, on a claim for provided insurance coverage by Great American N.Y. (*Id.* ¶¶ 7, 18-21). Plaintiffs have not alleged any facts or legal theory that would provide a reasonable basis for its bad faith claim against Howell, individually. Howell is not alleged to be a party to an insurance contract with Good Shepherd. Plaintiffs do not allege that they hired or retained Howell or his employer, NHI. Plaintiffs do not allege that the acts or omissions of Howell caused any personal injury or property damage. Plaintiffs do not allege that Howell committed fraud. In fact it is impossible to determine from the allegations of the Complaint the scope of Howell's work in adjusting the Plaintiffs' loss. In particular Plaintiffs do not allege that Howell had the right to deny claims or determine the amounts to be paid by Great American N.Y.

18. Nebraska courts recognize first party bad faith claims as an action in tort that arises from the implied covenant of good faith and fair dealing, which, in turn, is dependent upon the existence of a contractual relationship. *See Braesch v. Union Ins. Co.*, 237 Neb. 44, 55-56, 464 N.W.2d 769, 776 (1991); *Ruwe v. Farmers Mutual*, 238 Neb. 67, 74, 469 N.W.2d 129, 135 (1991); and *LaRette v. American Medical Security, Inc.*, 270 Neb. 545, 553, 705 N.W.2d 41, 48 (2007). Since, the insurance contract was entered into between Plaintiffs and Great American N.Y. (Complaint, ¶ 4), Howell was not a party to that contract and cannot be held personally liable for claims dependent on that contract. *See Braesch*, 237 Neb. At 55-56, 464 N.W.2d at 776. Having no such contractual relationship, Howell owed no duty to Plaintiffs.

19. Howell's fraudulent joinder is further highlighted based on his status as an employee of NHI. (Complaint ¶ 9). Plaintiffs allege that Howell was acting as an employee of NHI, not in an individual capacity. (*Id.* ¶ 7).

20. Generally, an agent is not personally liable on contracts entered into by his principal, so long as the agent was acting within the scope of his authority. *Haines v. National Union Fire Ins. Co.*, 812 F. Supp. 93, 96 (S.D.Tex. 1993) (citing *Corpus Christi Dev. Corp. v. Carlton*, 644 S.W.2d 521, 523 (Tex.App. Corpus Cristi 1982)). In fact, the Nebraska Supreme Court has explained that “[w]hen a party contracts with a known agent acting within the scope of this or her authority for a disclosed principal, the contract is that of the principal only and the agent cannot be held personally liable thereon, unless the agent purports to bind himself or herself, or has otherwise bound himself or herself, to performance of the contract.” *Broad ex rel. Estate of Schekall v. Randy Bauer Ins. Agency, Inc.*, 275 neb. 788, 795, 749 N.W.2d 478, 483 (2008)(citing *Hecker v. Ravenna Bank*, 237 neb. 810, 468 N.W.2d 88 (1991); *Coffey v. Mann*, 7 Neb. App. 805, 585 N.W.2d 518 (1998)).

21. Howell owes the Plaintiffs no duty since Nebraska does not recognize a claim for bad faith against Howell based on the allegations of the Complaint. It is clear that the claim against Howell was asserted with the sole purpose of destroying the complete diversity that exists between the Plaintiff and Great American N.Y.<sup>1</sup>

#### **PROCEDURE FOR REMOVAL**

22. Defendants have complied with all applicable requirements of 28 U.S.C. §1446, and are promptly serving notice of this removal to Plaintiffs and the District Court of Washington County, Nebraska. Pursuant to 28 U.S.C. § 1446(d).

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<sup>1</sup> The fraudulent joinder is further illustrated by the fact that Plaintiffs are not seeking to hold NHI, a diverse entity, liable for bad faith.

23. Defendants reserve the right to amend or supplement this Notice of Removal.

24. Defendants reserve all defenses.

WHEREFORE, the Defendants request that the above-entitled action now pending in the District Court of Washington County, Nebraska, be removed to this Court and that this Court accept jurisdiction of the action and place the action on the docket of this Court for further proceedings, the same as though this action had been originally instituted in this Court.

DATED this 12<sup>th</sup> day of December, 2014.

GREAT AMERICAN INSURANCE  
COMPANY OF NEW YORK, GREAT  
AMERICAN INSURANCE COMPANY and  
ERIC HOWELL,

By: /s/J.Scott Paul

J. Scott Paul (16635)

Brian T. McKernan (22174)

McGrath North Mullin & Kratz, PC LLO  
First National Tower, Suite 3700

1601 Dodge Street

Omaha, Nebraska 68102

(402) 341-3070

(402) 341-0216 fax

[spaul@mcgrathnorth.com](mailto:spaul@mcgrathnorth.com)

[bmckernan@mcgrathnorth.com](mailto:bmckernan@mcgrathnorth.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of December, 2014, the foregoing document was served via U.S. Mail, postage pre-paid to:

Brian E. Jorde  
Domina Law Group, PC LLO  
2425 S. 144<sup>th</sup> St.  
Omaha, NE 68144  
bjorde@dominalaw.com

Richard D. Daly  
Daly & Black, PC  
2211 Norfolk St., Ste. 800  
Houston, TX 77098  
rdaly@dalyblack.com

/s/J. Scott Paul

**DISTRICT COURT, WASHINGTON COUNTY, NEBRASKA**

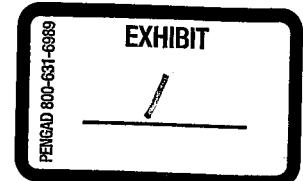
GOOD SHEPHERD )  
 ASSISTED LIVING CORP. )  
 and GOOD SHEPHERD )  
 LUTHERAN COMMUNITY )  
 CORP. )  
 )  
*Plaintiff,* )  
 )  
 vs. )  
 )  
 )  
 GREAT AMERICAN INSURANCE) )  
 COMPANY OF NEW YORK )  
 d/b/a GREAT AMERICAN )  
 INSURANCE COMPANY and )  
 ERIC HOWELL )  
 )  
*Defendants.* )

CASE NO. \_\_\_\_\_

**Plaintiffs' Original Complaint**

1. Plaintiffs GOOD SHEPHERD ASSISTED LIVING CORP. and GOOD SHEPHERD LUTHERAN COMMUNITY CORP. (collectively "Good Shepherd" or "Plaintiffs") are Nebraska Non-Profit Corporations located at 2242 Wright Street, Blair, Nebraska, operate several facilities incorporated under two names, and do business as the Good Shepherd, and allege as follows:

2. Defendant GREAT AMERICAN INSURANCE COMPANY OF NEW YORK d/b/a GREAT AMERICAN INSURANCE COMPANY ("Great American") is an Ohio-based insurance company that underwrites, among other things, property, casualty, and wind or hail loss insurance policies in the State of Nebraska. Great American's administrative offices are located at 301 E. 4<sup>th</sup> Street, Cincinnati, Ohio 45202-4201. Pursuant to Nebraska Rule of Civil Procedure 25-509.01, Great American may be served via certified mail by serving both its Chief Executive Officer Donald Larson at 301 E. 4<sup>th</sup>



Street, Cincinnati, Ohio 45202-420, and C.T. Corporation, 111 Eighth Avenue, New York, New York, 10011.

3. Defendant ERIC HOWELL (“Howell”) is an individual who works at 13110 Birch Drive #182, Suite 148, Omaha, Nebraska 68164. Pursuant to Nebraska Rule of Civil Procedure 25-508.01, Howell may be served via certified mail.

4. On or about June 3, 2014 Good Shepherd, a faith-based Nebraska business providing services to the elderly and infirmed, as well as to children, was a named insured under an insurance policy issued by Great American that provided coverage for any losses resulting from hail, wind, or other such storm damage (the “Policy”).

5. Plaintiffs paid all premiums required under the Policy, and performed all other conditions precedent required thereunder.

6. On or about June 3, 2014 a powerful storm hit the Washington County area and Blair, Nebraska, seriously damaging Plaintiffs’ property covered by the Policy. The property in question (the “Property”) is located at 2242 Wright Street, Blair, Nebraska. Plaintiffs subsequently filed a claim on the Policy, which was assigned Claim No. 571567687. A separate lightning strike was assigned Claim No. 571566042.

7. Howell, who is employed by NHI Adjusters, was hired by Great American and assigned as an individual adjuster on the claim. Upon information and belief, Howell conducted a substandard investigation and inspection of the Property, prepared a report that failed to include all of the damages, and purposefully undervalued damages to the Property. Howell excluded certain items from coverage despite not having reviewed the policy or familiarized himself with its exclusions. Indeed, as of August 29, 2014, after Howell had performed his work, Howell did not know which exclusions, if any, applied

to the claim. Defendants acted in concert and performed an outcome-oriented investigation of Plaintiffs' claim that resulted in a biased, unfair, and inequitable evaluation of Plaintiffs' losses on the Property. Instead of acknowledging liability once it had become reasonably clear to them, Defendants delayed payments and approval of much-needed repairs, causing further damage, including mold, to the facility.

8. Defendants improperly underpaid and/or denied the claim. Moreover, Plaintiffs have incurred significant losses due to business interruption, other personal property losses related to the storm, damages related to a lightning strike, and other consequential damages stemming from Great American's breach of the policy.

9. Defendants' conduct, mishandling, underpayment, and delay in payments on the property damage claim has compelled Plaintiffs to institute litigation to recover amounts due under the policy.

10. Defendants' conduct constitutes bad faith under Nebraska common law. Defendants failed to employ fair settlement practices, failed to conduct a proper investigation and instead chose to conduct a perfunctory and results-driven investigation, demonstrated indifference to facts submitted to them, unnecessarily delayed the claims process in an effort to maximize year-end profits, and failed to subject the results and findings to reasonable evaluation and review.

11. The District Court has subject matter jurisdiction pursuant to Section 24-302 of Nebraska Revised Statutes. The amount in controversy exceeds the County Court jurisdiction.

12. Venue is proper in Washington County, Nebraska, because the Property is located here, the claim arose here, and the insurance policy was delivered here.

**FIRST CAUSE OF ACTION: BREACH OF CONTRACT (GREAT AMERICAN)**

13. COMES NOW, Plaintiffs, and for their First Cause of Action against Great American, and pursuant to Section 44-359 of Nebraska Revised Statutes, allege and state as follows:

14. Plaintiffs specifically incorporate by reference the preceding paragraphs 1-13 as though set forth fully herein.

15. By undervaluing, denying, and refusing to fully compensate Plaintiffs' claims for benefits arising from the damages sustained during the storm, Great American breached the terms of its insurance contract with Plaintiffs.

16. Due to Great American's breach, Plaintiffs have been forced to retain counsel and have been damaged in a sum to be determined at trial and final judgment. Plaintiffs' damages include, without limitation, actual damages, interest, and consequential damages, such as mold and required remediation.

17. WHEREFORE, Plaintiffs pray for judgment against Great American in an amount to be determined at trial and for interest, costs, and reasonable attorney's fees pursuant to Section 44-359 of Nebraska Revised Statutes, together with any other and further relief the Court or jury deems reasonable and appropriate.

**SECOND CAUSE OF ACTION: BAD FAITH (GREAT AMERICAN/ HOWELL)**

18. COMES NOW, Plaintiffs, and for their Second Cause of Action against Defendants allege and state as follows:

19. Plaintiffs specifically incorporate the preceding paragraphs 1 through 18 as though set forth fully herein.

20. Defendants' conduct constitutes bad faith because: (1) Defendants had no reasonable basis for denial, delay, and underpayment of coverage, when liability was reasonably clear; and (2) Defendants acted in reckless disregard, and without having a reasonable basis for denying, delaying, and underpaying coverage. Defendants failed to employ fair settlement practices, failed to conduct a proper investigation and instead chose to conduct a perfunctory and results-driven investigation, demonstrated indifference to facts submitted to Howell and other Great American agents, unnecessarily delayed payments and the claims process in an effort to maximize year-end profits, and failed to subject the results and findings to reasonable evaluation and review. Reckless disregard can be inferred from this conduct, regardless of whether Defendants ultimately make good on Plaintiffs' claim. Moreover, this conduct ultimately caused injury to Plaintiff, some of which became considerably worse with the delay, i.e., the mold issues facing Good Shepherd. Finally, Defendants had no arguable basis to deny, delay, and underpay the claim based on the information they had at the time they evaluated the claim. As a result, Plaintiffs are entitled to actual damages and consequential damages including, without limitation, attorney's fees.

21. WHEREFORE, Plaintiffs pray for judgment against Defendants for damages for Defendants' bad faith refusal to timely pay all of the benefits due to Plaintiffs under the Policy, and for interest, consequential damages, costs, and reasonable attorney's fees pursuant to Section 44-359 of Nebraska Revised Statutes, together with any other and further relief the Court or jury deems reasonable and appropriate

**REQUEST FOR RELIEF**

22. WHEREFORE, Plaintiffs pray that, upon final hearing of the case, Plaintiffs recover all damages from and against Defendants that may reasonably be established by a preponderance of the evidence, which are presently estimated to be no less than \$3,535,815.48, which sum includes damages for the amounts still owed under Claim No. 571567687, amounts owed under Claim No. 571566042, business interruption losses, losses related to personal property, and mold damage and costs to remediate. Plaintiffs further ask that they be awarded attorneys' fees through trial and appeal as permitted by Section 44-359 of Nebraska Revised Statutes, consequential damages, costs of court, pre-judgment interest, and post-judgment interest. Plaintiffs also request such other and further relief, general or special, at law or in equity, to which they may show themselves to be justly entitled.

October 30, 2014

Respectfully submitted,

**DOMINA LAW GROUP, P.C. LLO**

By: /s/ Brian E. Jorde

Brian E. Jorde  
NSBA No. 23613  
[bjorde@dominalaw.com](mailto:bjorde@dominalaw.com)  
2425 S. 144<sup>th</sup> St.  
Omaha, Nebraska 68144  
402.493.4100—Telephone

**DALY & BLACK, P.C.**

By: /s/ Richard D. Daly

Richard D. Daly  
(Pro Hac Vice Admission)  
[rdaly@dalyblack.com](mailto:rdaly@dalyblack.com)  
2211 Norfolk St., Suite 800  
Houston, Texas 77098  
713.655.1405—Telephone  
713.655.1587—Fax

**ATTORNEYS FOR PLAINTIFFS**

**District Court, Washington County, Nebraska**

**GOOD SHEPHERD ASSISTED  
LIVING CORP. and GOOD  
SHEPHERD LUTHERAN  
COMMUNITY CORP.,**

**Case No. CI \_\_\_\_\_**

*Plaintiff,*

v

**GREAT AMERICAN INSURANCE  
COMPANY OF NEW YORK d/b/a  
GREAT AMERICAN INSURANCE  
COMPANY and ERIC HOWELL,**

**Praeclipe for Summons**

**Defendants.**

To: Clerk of the District Court:

Pursuant to *Neb Rev Stat* §§ 25-505.01 *et seq.*, please issue Summonses directed to the following:

Great American Insurance Company of New York  
d/b/a Great American Insurance Company  
By serving both its Chief Executive Officer, Donald Larson, at  
301 E. 4<sup>th</sup> Street  
Cincinnati, Ohio 45202  
and  
C.T. Corporation  
111 Eighth Avenue  
New York, New York 10011

Eric Howell  
13110 Birch Drive, #182, Suite 148  
Omaha, Nebraska 68164

Plaintiff elects to make service of process by certified mail.

October 30, 2014.

Respectfully submitted,

DOMINALAW Group p c llo

By: /s/ Brian E. Jorde

Brian E. Jorde, #23613  
2425 S. 14th Street  
Omaha, NE 68144  
402-493-4100  
[bjorde@dominalaw.com](mailto:bjorde@dominalaw.com)

Daly & Black, PC

By: /s/ Richard D. Daly

Richard D. Daly  
(Pro Hac Vice Admission)  
[rdaly@dalyblack.com](mailto:rdaly@dalyblack.com)  
2211 Norfolk St., Suite 800  
Houston, TX 77098  
713-655-1405 (Telephone)  
713-655-1587 (Fax)

*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF WASHINGTON COUNTY, NEBRASKA

GOOD SHEPHERD ASSISTED LIVING ) Case No. CI 14-212  
CORP. and GOOD SHEPHERD LUTHERAN )  
CORP. )  
Plaintiff, )  
vs. )  
GREAT AMERICAN INSURANCE )  
COMPANY OF NEW YORK )  
d/b/a GREAT AMERICAN INSURANCE )  
COMPANY and ERIC HOWELL ) MOTION FOR PRO HAC VICE  
Defendants. ) ADMISSION

2014 OCT 31 PM 2:23  
WASHINGTON COUNTY, NE  
SUSAN PAULSEN  
CLERK OF DISTRICT COURT

FILED

**MOTION FOR PRO HAC VICE ADMISSION**

Brian E. Jorde hereby moves this Court to grant Richard D. Daly admission pro hac vice in the above-captioned case, as co-counsel for the plaintiff.

Brian E. Jorde is a resident of Nebraska, duly and regularly admitted to practice in the courts of record of this state, and service may be had in all matters connected with this action.

Brian E. Jorde, or my designee who shall be licensed to practice in the courts of record of this state, will sign all pleadings, motions, and papers filed in the case, as well as personally appear at all proceedings before the court, unless excused by the court.

In support of this motion, please see the attached application signed by the applicant.

Wherefore, Brian E. Jorde, respectfully moves this Court for admission pro hac vice for Richard D. Daly in the above-captioned case.

/s/ Brian E. Jorde  
\_\_\_\_\_  
Brian E. Jorde  
NSBA No. 23613  
Domina Law Group  
2425 S. 144<sup>th</sup> St.  
Omaha, Nebraska 68144  
402.493.4100—Telephone  
[bjorde@dominalaw.com](mailto:bjorde@dominalaw.com)



000043814D29

APPLICATION FOR PRO HAC VICE ADMISSION

ATTORNEY NAME: Richard D. Daly

CASE CAPTION: Good Shepherd Assisted Living Corp. and Good Shepherd Lutheran Community Corp. vs. Great American Insurance Company of New York d/b/a Great American Insurance Company and Eric Howell

CASE NUMBER: CI 14-212

Court in which you are requesting pro hac vice: District Court of Washington County Nebraska

RICHARD D. DALY, desiring pro hac vice in the above-stated matter to represent Plaintiff, affirms as follows:

RICHARD D. DALY is an attorney admitted and eligible to practice law in Texas and is a member in good standing.

RICHARD D. DALY is not the subject of a disciplinary action or investigation.

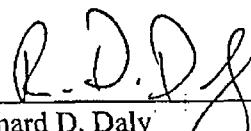
RICHARD D. DALY, upon admission pro hac vice, will be subject to the Rules of Professional Conduct, Neb. Ct. R. of Prof. Cond. §§ 3-501.0 to 3-508.5.

Richard D. Daly has associated with the following attorney who is duly and regularly admitted to practice in the courts of record of this state, and upon whom service may be had in all matters connected with the action:

NAME OF LOCAL COUNSEL AND BAR NUMBER: Brian E Jorde NSBA NO. 23613

RICHARD D. DALY has paid the \$250 fee to the Clerk of the Court

By: \_\_\_\_\_



Richard D. Daly  
State Bar of Texas No 24076368  
Daly & Black, P.C.  
2211 Norfolk Street, Suite 800  
Houston, Texas 77098  
713.655.1405—Telephone  
713.655.1587—Fax

IN THE DISTRICT COURT OF WASHINGTON COUNTY, NEBRASKA

GOOD SHEPHERD )  
ASSISTED LIVING CORP. )  
and GOOD SHEPHERD )  
LUTHERAN COMMUNITY )  
CORP. )  
  
*Plaintiff,* )  
vs. )  
  
GREAT AMERICAN INSURANCE) )  
COMPANY OF NEW YORK )  
d/b/a GREAT AMERICAN )  
INSURANCE COMPANY and )  
ERIC HOWELL )  
  
*Defendants.* )

CASE NO. CI 14-212

OATH

WASHINGTON COUNTY, NE  
SUSAN PAULSEN  
CLERK OF DISTRICT COURT

**FILED**

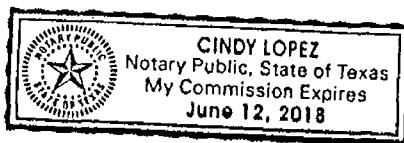
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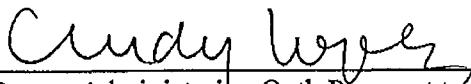
I, the undersigned attorney, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Nebraska, that I will faithfully discharge the duties of an attorney and counselor, according to the best of my ability.

Dated this 28<sup>th</sup> day of October, 2014.

  
Richard D. Daly

Subscribed and sworn to before me this 28<sup>th</sup> day of October, 2014.



  
Person Administering Oath Pursuant to  
Neb. Rev. Stat § 24-1002



000043815D29

District Court, Washington County, Nebraska

Good Shepherd Assisting Living  
Corp. and Good Shepherd Lutheran  
Corp.

Plaintiff,

Vs.

Great American Insurance  
Company of New York  
d/b/a Great American Insurance  
Company and Eric Howell.

Defendants.

Case No. C14-212

Order

WASHINGTON COUNTY, NE  
SU珊PAUSEN, CLERK OF DISTRICT COURT

2014 NOV - 3 AM 11:49

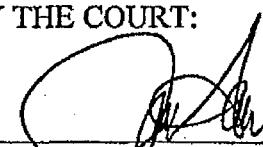
FILED

This matter comes before the Court upon Richard D. Daly's Motion and Application for *Pro Hac Vice*.

The Court hereby grants the Motion and Application and Richard D. Daly is admitted *Pro Hac Vice* for the above entitled matter.

This 31 day of October, 2014.

BY THE COURT:

  
District Court Judge



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Image ID:  
D00015055D29

## SUMMONS

Case Number: D29CI140000212  
Doc. No. 15055  
Transaction ID: 0001825430

Filing Date: 11/19/2014 09:13:11 AM CST

IN THE DISTRICT COURT OF Washington COUNTY, NEBRASKA

PO Box 431  
Blair NE 68008 0431

Good Shepherd Assisted Living Corp. v. Great American Insurance Co.

Case ID: CI 14 212

TO: Great American Insurance Co.  
DBA: Great American Insurance Co.

You have been sued by the following plaintiff(s):

Good Shepherd Assisted Living Corp.

Plaintiff's Attorney: Brian E Jorde  
Address: 2425 S 144th Street  
Omaha, NE 68144-3267

Telephone: (402) 493-4100

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: OCTOBER 30, 2014

BY THE COURT:

  
Susan K. Paulsen  
Clerk


PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Great American Insurance Co.  
301 E. 4th Street  
Cincinnati, OH 45202

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

**SERVICE RETURN**

Doc. No. 15055

Washington District Court

PO Box 431  
Blair NE 68008 0431

To:

Case ID: CI 14 212 Good Shepherd Assi v. Great American Ins

Received this Summons on \_\_\_\_\_, \_\_\_\_\_. I hereby certify that on  
\_\_\_\_\_, \_\_\_\_ at \_\_\_\_\_ o'clock \_\_ M. I served copies of the Summons  
upon the party:by \_\_\_\_\_  
\_\_\_\_\_

as required by Nebraska state law.

Service and return \$ \_\_\_\_\_

Copy \_\_\_\_\_

Mileage \_\_\_\_ miles \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
(Sheriff or authorized person)**CERTIFIED MAIL  
PROOF OF SERVICE**Copies of the Summons were mailed by certified mail, 9414 81092 0082 8381 0295 96,  
TO THE PARTY: Great American Insurance Co.

At the following address: 301 E. 4th Street, Cincinnati, OH 45202

on the 9th day of November 2014, as required by Nebraska state law.

Postage \$ 5.86 Attorney for: Plaintiff

The return receipt for mailing to the party was signed on November 17, 2014.

To: Great American Insurance Co.  
301 E. 4th Street  
Cincinnati, OH 45202From: Brian E Jorde  
2425 S 144th Street  
Omaha, NE 68144-3267**ATTACH RETURN RECEIPT & RETURN TO COURT**

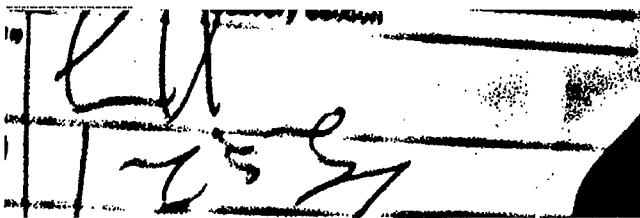


Date: November 18, 2014

Richard Daly:

The following is in response to your November 18, 2014 request for delivery information on your Certified Mail™/RRE item number 9414810200828381029596. The delivery record shows that this item was delivered on November 17, 2014 at 11:41 am in NEW YORK, NY 10011. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,  
United States Postal Service

Image ID:  
D00015056D29

## SUMMONS

Case Number: D29CI140000212  
Doc. No. 15056  
Transaction ID: 0001825430

Filing Date: 11/19/2014 09:13:11 AM CST

IN THE DISTRICT COURT OF Washington COUNTY, NEBRASKA

PO Box 431  
Blair NE 68008 0431

Good Shepherd Assisted Living Corp. v. Great American Insurance Co.

Case ID: CI 14 212

TO: Eric Howell

You have been sued by the following plaintiff(s):

Good Shepherd Assisted Living Corp.

Plaintiff's Attorney: Brian E Jorde  
Address: 2425 S 144th Street  
Omaha, NE 68144-3267

Telephone: (402) 493-4100

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: OCTOBER 30, 2014

BY THE COURT:

*Susan K. Paulsen*  
Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Eric Howell  
13110 Birch Drive, #182, Suite 148  
Omaha, NE 68164

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

## SERVICE RETURN

Doc. No. 15056

Washington District Court

PO Box 431  
Blair NE 68008 0431

To:

Case ID: CI 14 212 Good Shepherd Assi v. Great American Ins

Received this Summons on \_\_\_\_\_, I hereby certify that on  
\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_ M. I served copies of the Summons  
upon the party:by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

as required by Nebraska state law.

Service and return \$ \_\_\_\_\_

Copy \_\_\_\_\_

Mileage \_\_\_\_\_ miles \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
(Sheriff or authorized person)CERTIFIED MAIL  
PROOF OF SERVICECopies of the Summons were mailed by certified mail, 9414 8102 0082 9380 9741 91,  
TO THE PARTY: Eric Howell

At the following address: 13110 Birch Drive, #182, Suite 148, Omaha, NE 68164

on the 9th day of November 2014, as required by Nebraska state law.

Postage \$ 5.86 Attorney for: Plaintiff

The return receipt for mailing to the party was signed on November 14, 2014.

To: Eric Howell  
13110 Birch Drive, #182, Suite 148  
Omaha, NE 68164From: Brian E Jorde  
2425 S 144th Street  
Omaha, NE 68144-3267

ATTACH RETURN RECEIPT &amp; RETURN TO COURT



Date: November 18, 2014

Richard Daly:

The following is in response to your November 18, 2014 request for delivery information on your Certified Mail™/RRE item number 9414810200829380974191. The delivery record shows that this item was delivered on November 14, 2014 at 1:04 pm in OMAHA, NE 68164. The scanned image of the recipient information is provided below.

Signature of Recipient :

Mr.	Lori Reeves
Mrs.	
Miss	Loni Reeves

Address of Recipient :

City	13110 Birch Dr
State	Ste 148 # 182

Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,  
United States Postal Service

Image ID:  
D00015056D29

SUMMONS

Doc. No. 15056

IN THE DISTRICT COURT OF Washington COUNTY, NEBRASKA

PO Box 431  
Blair NE 68008 0431

Good Shepherd Assisted Living Corp. v. Great American Insurance Co.

Case ID: CI 14 212

TO: Eric Howell

You have been sued by the following plaintiff(s):

Good Shepherd Assisted Living Corp.

Plaintiff's Attorney: Brian E Jorde  
Address: 2425 S 144th Street  
Omaha, NE 68144-3267

Telephone: (402) 493-4100

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: OCTOBER 30, 2014 BY THE COURT: *Susan K. Paulsen*  
Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Eric Howell  
13110 Birch Drive, #182, Suite 148  
Omaha, NE 68164

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

## SERVICE RETURN

Doc. No. 15056

Washington District Court

PO Box 431  
Blair NE 68008 0431

To:

Case ID: CR 14 212 Good Shepherd Assi v. Great American Ins

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upon the party:

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Service and return \$ \_\_\_\_\_

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Mileage \_\_\_\_\_ miles \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
(Sheriff or authorized person)CERTIFIED MAIL  
PROOF OF SERVICECopies of the Summons were mailed by certified mail,  
TO THE PARTY: \_\_\_\_\_At the following address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, as required by Nebraska state law.  
\_\_\_\_\_  
\_\_\_\_\_

Postage \$ \_\_\_\_\_ Attorney for: \_\_\_\_\_

The return receipt for mailing to the party was signed on \_\_\_\_\_

To: Eric Howell  
13110 Birch Drive, #182, Suite 148  
Omaha, NE 68164From: Brian E Jorde  
2425 S 144th Street  
Omaha, NE 68144-3267

ATTACH RETURN RECEIPT &amp; RETURN TO COURT

## DISTRICT COURT, WASHINGTON COUNTY, NEBRASKA

GOOD SHEPHERD )  
ASSISTED LIVING CORP. )  
and GOOD SHEPHERD )  
LUTHERAN COMMUNITY )  
CORP. )  
)  
*Plaintiff,* )  
)  
vs. )  
)  
GREAT AMERICAN INSURANCE) )  
COMPANY OF NEW YORK )  
d/b/a GREAT AMERICAN )  
INSURANCE COMPANY and )  
ERIC HOWELL )  
)  
*Defendants.* )

CASE NO. \_\_\_\_\_

**Plaintiffs' Original Complaint**

1. Plaintiffs GOOD SHEPHERD ASSISTED LIVING CORP. and GOOD SHEPHERD LUTHERAN COMMUNITY CORP. (collectively "Good Shepherd" or "Plaintiffs") are Nebraska Non-Profit Corporations located at 2242 Wright Street, Blair, Nebraska, operate several facilities incorporated under two names, and do business as the Good Shepherd, and allege as follows:

2. Defendant GREAT AMERICAN INSURANCE COMPANY OF NEW YORK d/b/a GREAT AMERICAN INSURANCE COMPANY ("Great American") is an Ohio-based insurance company that underwrites, among other things, property, casualty, and wind or hail loss insurance policies in the State of Nebraska. Great American's administrative offices are located at 301 E. 4<sup>th</sup> Street, Cincinnati, Ohio 45202-4201. Pursuant to Nebraska Rule of Civil Procedure 25-509.01, Great American may be served via certified mail by serving both its Chief Executive Officer Donald Larson at 301 E. 4<sup>th</sup>

Street, Cincinnati, Ohio 45202-420, and C.T. Corporation, 111 Eighth Avenue, New York, New York, 10011.

3. Defendant ERIC HOWELL ("Howell") is an individual who works at 13110 Birch Drive #182, Suite 148, Omaha, Nebraska 68164. Pursuant to Nebraska Rule of Civil Procedure 25-508.01, Howell may be served via certified mail.

4. On or about June 3, 2014 Good Shepherd, a faith-based Nebraska business providing services to the elderly and infirmed, as well as to children, was a named insured under an insurance policy issued by Great American that provided coverage for any losses resulting from hail, wind, or other such storm damage (the "Policy").

5. Plaintiffs paid all premiums required under the Policy, and performed all other conditions precedent required thereunder.

6. On or about June 3, 2014 a powerful storm hit the Washington County area and Blair, Nebraska, seriously damaging Plaintiffs' property covered by the Policy. The property in question (the "Property") is located at 2242 Wright Street, Blair, Nebraska. Plaintiffs subsequently filed a claim on the Policy, which was assigned Claim No. 571567687. A separate lightning strike was assigned Claim No. 571566042.

7. Howell, who is employed by NHI Adjusters, was hired by Great American and assigned as an individual adjuster on the claim. Upon information and belief, Howell conducted a substandard investigation and inspection of the Property, prepared a report that failed to include all of the damages, and purposefully undervalued damages to the Property. Howell excluded certain items from coverage despite not having reviewed the policy or familiarized himself with its exclusions. Indeed, as of August 29, 2014, after Howell had performed his work, Howell did not know which exclusions, if any, applied

to the claim. Defendants acted in concert and performed an outcome-oriented investigation of Plaintiffs' claim that resulted in a biased, unfair, and inequitable evaluation of Plaintiffs' losses on the Property. Instead of acknowledging liability once it had become reasonably clear to them, Defendants delayed payments and approval of much-needed repairs, causing further damage, including mold, to the facility.

8. Defendants improperly underpaid and/or denied the claim. Moreover, Plaintiffs have incurred significant losses due to business interruption, other personal property losses related to the storm, damages related to a lightning strike, and other consequential damages stemming from Great American's breach of the policy.

9. Defendants' conduct, mishandling, underpayment, and delay in payments on the property damage claim has compelled Plaintiffs to institute litigation to recover amounts due under the policy.

10. Defendants' conduct constitutes bad faith under Nebraska common law. Defendants failed to employ fair settlement practices, failed to conduct a proper investigation and instead chose to conduct a perfunctory and results-driven investigation, demonstrated indifference to facts submitted to them, unnecessarily delayed the claims process in an effort to maximize year-end profits, and failed to subject the results and findings to reasonable evaluation and review.

11. The District Court has subject matter jurisdiction pursuant to Section 24-302 of Nebraska Revised Statutes. The amount in controversy exceeds the County Court jurisdiction.

12. Venue is proper in Washington County, Nebraska, because the Property is located here, the claim arose here, and the insurance policy was delivered here.

**FIRST CAUSE OF ACTION: BREACH OF CONTRACT (GREAT AMERICAN)**

13. COMES NOW, Plaintiffs, and for their First Cause of Action against Great American, and pursuant to Section 44-359 of Nebraska Revised Statutes, allege and state as follows:

14. Plaintiffs specifically incorporate by reference the preceding paragraphs 1-13 as though set forth fully herein.

15. By undervaluing, denying, and refusing to fully compensate Plaintiffs' claims for benefits arising from the damages sustained during the storm, Great American breached the terms of its insurance contract with Plaintiffs.

16. Due to Great American's breach, Plaintiffs have been forced to retain counsel and have been damaged in a sum to be determined at trial and final judgment. Plaintiffs' damages include, without limitation, actual damages, interest, and consequential damages, such as mold and required remediation.

17. WHEREFORE, Plaintiffs pray for judgment against Great American in an amount to be determined at trial and for interest, costs, and reasonable attorney's fees pursuant to Section 44-359 of Nebraska Revised Statutes, together with any other and further relief the Court or jury deems reasonable and appropriate.

**SECOND CAUSE OF ACTION: BAD FAITH (GREAT AMERICAN/ HOWELL)**

18. COMES NOW, Plaintiffs, and for their Second Cause of Action against Defendants allege and state as follows:

19. Plaintiffs specifically incorporate the preceding paragraphs 1 through 18 as though set forth fully herein.

20. Defendants' conduct constitutes bad faith because: (1) Defendants had no reasonable basis for denial, delay, and underpayment of coverage, when liability was reasonably clear; and (2) Defendants acted in reckless disregard, and without having a reasonable basis for denying, delaying, and underpaying coverage. Defendants failed to employ fair settlement practices, failed to conduct a proper investigation and instead chose to conduct a perfunctory and results-driven investigation, demonstrated indifference to facts submitted to Howell and other Great American agents, unnecessarily delayed payments and the claims process in an effort to maximize year-end profits, and failed to subject the results and findings to reasonable evaluation and review. Reckless disregard can be inferred from this conduct, regardless of whether Defendants ultimately make good on Plaintiffs' claim. Moreover, this conduct ultimately caused injury to Plaintiff, some of which became considerably worse with the delay, i.e., the mold issues facing Good Shepherd. Finally, Defendants had no arguable basis to deny, delay, and underpay the claim based on the information they had at the time they evaluated the claim. As a result, Plaintiffs are entitled to actual damages and consequential damages including, without limitation, attorney's fees.

21. WHEREFORE, Plaintiffs pray for judgment against Defendants for damages for Defendants' bad faith refusal to timely pay all of the benefits due to Plaintiffs under the Policy, and for interest, consequential damages, costs, and reasonable attorney's fees pursuant to Section 44-359 of Nebraska Revised Statutes, together with any other and further relief the Court or jury deems reasonable and appropriate

**REQUEST FOR RELIEF**

22. WHEREFORE, Plaintiffs pray that, upon final hearing of the case, Plaintiffs recover all damages from and against Defendants that may reasonably be established by a preponderance of the evidence, which are presently estimated to be no less than \$3,535,815.48, which sum includes damages for the amounts still owed under Claim No. 571567687, amounts owed under Claim No. 571566042, business interruption losses, losses related to personal property, and mold damage and costs to remediate. Plaintiffs further ask that they be awarded attorneys' fees through trial and appeal as permitted by Section 44-359 of Nebraska Revised Statutes, consequential damages, costs of court, pre-judgment interest, and post-judgment interest. Plaintiffs also request such other and further relief, general or special, at law or in equity, to which they may show themselves to be justly entitled.

October 30, 2014

Respectfully submitted,

**DOMINA LAW GROUP, P.C. LLO**

By: /s/ Brian E. Jorde

Brian E. Jorde  
NSBA No. 23613  
[bjorde@dominalaw.com](mailto:bjorde@dominalaw.com)  
2425 S. 144<sup>th</sup> St.  
Omaha, Nebraska 68144  
402.493.4100—Telephone

**DALY & BLACK, P.C.**

By: /s/ Richard D. Daly

Richard D. Daly  
(Pro Hac Vice Admission)  
[rdaly@dalyblack.com](mailto:rdaly@dalyblack.com)  
2211 Norfolk St., Suite 800  
Houston, Texas 77098  
713.655.1405—Telephone  
713.655.1587—Fax

**ATTORNEYS FOR PLAINTIFFS**